IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

MONDAY, THE 22ND OCTOBER 2007 / 30TH ASWINA 1929

WP(C).No. 26193 of 2004(R)

PETITIONER:

1. GWALIOR RAYONS PULP & FIBRE
   STAFF UNION, MAVOOR, KOZHIKODE.

2. V. SUKUMARAN NAIR, LAKSHMI NILAYAM
   28/485, NEAR STATE BANK OFFICERS'
   COLONY, CHEVARAMBALAM P.O., KOZHIKODE-673 017.

BY ADV. SRI.A.JAYASANKAR
SRI.C.ANIL KUMAR

RESPONDENTS:

1. LABOUR COURT, KOZHIKODE.

2. GWALIOR RAYONS WORKERS UNION (HMS)
   MAVOOR, KOZHIKODE, REPRESENTED BY ITS
   PRESIDENT.

3. GRASIM INDUSTRIES LIMITED, MAVOOR
   KOZHIKODE, REPRESENTED BY ITS FACOTRY MANAGER.

BY ADV. K.K.NANDAKUMAR
SRI.A.K.JAYASANKAR NAMBIAR
SMT.PRIYA MAHESH
SMT.PRIYA MANJOORAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 22/10/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P(C).No. 26193/04.

APPENDIX

PETITIONER'S EXHIBITS:

P1. COPY OF THE AWARD DTD.3.9.91 IN ID.NO.41/90 BY R1.

P2. COPY OF THE JUDGMENT DTD.25.3.98 IN O.P.NO.9336/92.

P3. COPY OF THE JUDGMENT DTD.29.10.99 IN W.A.NO.1398/98.

P4. COPY OF THE AWARD DTD.28.11.02 BY R1 IN I.D.NO.41/90.

P5. COPY OF THE COMMON ORDER DTD.9.3.04 IN M.P.NOS.109, 110 & 111 OF 2002 IN I.D.NO.41/90.

Sdk+

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P.A. to Judge.

S.SIRI JAGAN, J.

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W.P.(C).No.26193 of 2004

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Dated this the 22nd day of October, 2007

J U D G M E N T

An industrial dispute, which was raised regarding denial of promotion and certain other benefits to a workman by name, V.Sukumaran Nair, espoused by the Gwalior Rayons Pulp & Fibre Staff Union, was referred for adjudication to the Labour Court, Kozhikkode, which adjudicated the dispute as I.D.No.41/1990. Originally, by Ext.P1 award, the management was directed to include the workman in the category of consolidated staff with effect from 1.1.1977 with all attendant benefits. This was challenged by the management in O.P.No.9336/1992. In that original petition, a learned Judge of this court while upholding the findings of the Labour Court regarding issue No.1, directed the Labour Court to consider issue No.2 in accordance with law and in the light of the observations contained in that judgment. There was a further direction to decide issue Nos.3 and 4 also on

that basis. In the writ appeal the said judgment was confirmed but with liberty to the parties to agitate the validity of the award to be passed in a manner known to law. Thereafter, the Labour Court again took up the matter for consideration and in the course of further consideration, the counsel for the union reported before the Court that he has no instruction in the matter and accordingly, by Ext.P4 award, the Labour Court held that the union is not interested in prosecuting the dispute further and there is no existing industrial dispute for adjudication. After about six months, another union by name, "Gwalior Rayons Pulp & Fibre Staff Union", the 1st petitioner herein, filed M.P.Nos.109/2002, 110/2002 and 111/2002 in the said industrial dispute seeking to reopen the industrial dispute after condoning the delay in seeking such reopening. All petitions were dismissed by Ext.P5 order. The reasoning adopted by the Labour Court was that the establishment was later closed, the management and the union entered into a settlement by which all workers including the workman in question were given compensation and therefore, this dispute also stands settled by that settlement.

2. The contention raised before me is that the issue

regarding promotion and consequential benefits of the workman involved was not a dispute settled on closure of the establishment and therefore, on the basis of that settlement the present industrial dispute cannot be closed.

3. I have heard the learned counsel for the petitioners as well as the counsel appearing for the third respondent.

4. I am of opinion that even otherwise, the petitions filed by the petitioners to reopen the industrial dispute is not maintainable. In the industrial dispute there were only two parties, ie. 2nd and 3rd respondent herein, as the management and the union espousing the cause of the workmen. That industrial dispute has ended in Ext.P4 award. In that industrial dispute the 1st petitioner union was never a party. The 2nd petitioner-workman cannot without a union espousing his cause seek reopening of the industrial dispute since this is not a case coming within Section 2A of the Industrial Disputes Act. The Labour Court has already become *functus officio* after 30 days of publishing Ext.P4 award. In the above circumstances, the industrial dispute could not have been reopened by the Labour Court at the instance of a union espousing the same cause of the

workman, which union was not a party to the industrial dispute at all. The contention of the petitioners is that the original union has become defunct on closure of the establishment and therefore, the 1st petitioner is entitled to espouse the cause of the workman. I am of opinion that if the original union has become defunct on closure of the establishment, by the same logic the 1st petitioner union should also be defunct. In any view of the matter, the petitioners who were not parties to the industrial dispute cannot seek reopening of the industrial dispute. In the above circumstances, I do not find any merit in this writ petition and accordingly, the same is dismissed.

Sd/-

sdk+ S.SIRI JAGAN, JUDGE

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P.A. to Judge.